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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,232	09/24/2004	Harald Reiter	DE 020074	3266
24737 7590 12/16/2008 PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3001 BRIARCLIFF MANOR, NY 10510				
EXAMINER NASSER, ROBERT L				
ART UNIT 3735		PAPER NUMBER		
MAIL DATE 12/16/2008		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/509,232

Applicant(s)

REITER ET AL.

Examiner

ROBERT L. NASSER

Art Unit

3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 05 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 6 are rejected under 35 U.S.C. 103(a) as being anticipated by Phipps 6579231 in view of Odagiri et al 5749366. Phipps shows a personal monitoring device including a sensor 16 including a heart beat sensor 16, a detection means to derive a feature indicative of abnormality from the sensor signal and triggers an alarm based on the feature (see for example – column 4, lines 14-15 and column 5, line 29), where the feature is a rate above a threshold, for example. Once triggered, the alarm signal is transmitted to PDU 14, where the alarm signal is the only signal that is sent. It does not selectively activate a motion sensor. However, Odagiri teaches a scheme to remove artifact and provide signals during periods of high motion that selectively activates a motion sensor (see figure 11 and column 9, lines 5-9). As such, it would have been obvious to use the heart rate sensing scheme of Odagiri in the system of Phipps, to eliminate errors caused by motion. Claim 6 is rejected in that the feature is indicative of cardiac arrest – i.e. loss of pulse.

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phipps in view of Odagiri et al, as applied to claims 1 and 6 above, further in view of

Lugo 6287252. With respect to claim 2, Phipps sends the signal immediately to the remote service center. However, Lugo teaches that by using a stationary in home relay, such as communications module 50, to transmit the signals to the remote station, the power requirements and size of the body mounted device may be kept to a minimum. Hence, it would have been obvious to modify the combination discussed above to use such a communications module, to improve the efficiency of the device. When an alarm is initiated in Lugo, Lugo controls a cellular phone to make contact with a medical professional. Hence, it controls a domestic device. Hence, it would have been obvious to modify the combination above to control the cellular phone, as it is merely the substitution of one known transmission method for another. With respect to claim 4, the communications module of Lugo is mobile. In addition, Phipps transmits location information to aid in locating the patient.

Claims 5 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phipps in view of Odagiri et al, as applied to claims 1 and 6 above, further in view of Bornn et al 5348008. Bornn further teaches providing an out of range signal when the user is out of range of the station. As such, it would have been obvious to modify the combination above to indicate when the user is out of range, to ensure that the patient is continuously monitored. With respect to claim 9, Bornn shows a device for the identical purpose that has the sensors incorporated into a garment. Hence, it would have been obvious to modify the combination above to use such a garment, as it is merely the substitution of one known equivalent sensor for another.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Phipps in view of Odagiri et al, as applied to claims 1 and 6 above, further in view of Myklebust et al 6351671. Myklebust shows a remote monitoring device such as in Phipps where the, where the home unit includes a defibrillator/telephone combination that allows a user to communicate with a professional for using the defibrillator. As such, it would have been obvious to modify Phipps et al to use such a defibrillator/telephone combination, to enable immediate treatment to be performed on the patient.

Applicant's arguments filed 9/5/2008 have been fully considered but they are moot in view of the new grounds of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT L. NASSER whose telephone number is (571)272-4731. The examiner can normally be reached on m-f 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert L. Nasser Jr/
Primary Examiner
Art Unit 3735

RLN
May 7, 2008